

IN THE MATTER OF the amended complaint, dated September 11, 1992 pursuant to the Human Rights Code, R.S.O. 1990, c. H. 19 by Jay Brasse and Janet Wing, alleging discrimination in accommodation on the basis of marital status by Vasija Real Estate, Nick Vasija, Mario Soave and Antonia Soave-Stewart

Complainants

Jay Brasse
Janet Wing

Respondents

Vasija Real Estate
Nick Vasija
Mario Soave
Antonia Soave-Stewart

Before

Katherine Tomaszewski

Appearances by

Mark Hart, counsel for the Human
Rights Commission
Kim Inksater, student at law, Human
Rights Commission

James J. Mays, counsel for the
Respondents

Date

January 19, 1994

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The Complainants Jay Brasse and Janet Wing, allege that "they are single professionals who were denied accommodation because of our marital status" in contravention of sections 2(1) and 8 of the Ontario Human Rights Code ("the Code"). The facts in this case are simple, with conflicting evidence on three crucial points. There are no issues of law raised in this case.

The most important matter for the Board to determine in this case is the question of credibility. No independent witnesses appeared to give evidence. The Complainants and the Respondents gave opposing evidence with respect to the issue of whether or not the Complainants were denied the opportunity to rent the premises in question because they were single, and did not constitute a family or a married couple. The Complainants allege they were denied accommodation for this reason. The Respondents allege that the Complainants were denied accommodation because they were too rude, pushy, aggressive; and would not make good tenants.

There is no doubt that the Respondents did not like the Complainants, and that they found them to be rude and pushy, particularly after the Complainants had viewed the rental property. Nevertheless, the relevant concern under the Code is whether the marital or family status of the Complainants formed part of the basis on which the decision was made to rent to someone other than the Complainants. If so, then, absent a defence, the Respondents are liable for breaching the Code. The Respondents raised no defence, other than to deny the Complainants' allegations.

After reviewing all of the evidence very carefully, the Board finds the evidence of the Complainants to be more credible than that of the Respondents. Both Complainants appeared to be very forthright witnesses, and gave consistent versions of what happened. The Board was particularly impressed with the testimony of Ms. Wing, who made no effort to overstate the impact which the alleged discrimination had upon her. Their evidence was consistent with a written statement given by Mr. Brasse to the Commission within 2 weeks of the events in question, and also with notes taken by the investigating officer at the time. The rental history of the property was also consistent with the allegations of the Complainants.

On the other hand, while it is clear that the Respondents believe that they have done nothing wrong, and that they believe they have not violated the Code, their version of the events was less credible. Both the evidence of Mr. Vasija and Ms. Antonia Soave-Stewart contained inconsistencies which weakened their credibility. These inconsistencies will be outlined below.

THE EVIDENCE

On or about March 20 1989, Mr. Brasse gave the following written statement to the Commission. I accept this statement as the most credible version of the events in question:

On Friday, March 10, Janet called Nick Vasija concerning a rental house advertised in the London Free Press on that day. Arrangements were made to view the house on the following day, Gary Chambers, Janet Pincombe, and myself, arrived at the house at approximately 6:15 p.m., the appointment was for 6:30. Nick was not there, but the current tenants allowed us to view the place. We had looked around and had decided that the place was perfect for us, and that we were going to rent it. At that point Nick opened the door, said hello, looked at the three of us, and asked what the arrangement between us was, I replied that we were all single. He then said that he would be honest with us, and that he was sorry, but the owners only wanted a family. I started to explain to him that all three of us were professionals, and that references we[re] no problem, he repeated he was sorry and just walked out, saying that he would talk to the owners. We then asked the tenants if they would give us the telephone number of the owner, since from Nicks attitude we didn't feel that he would say anything.

The next day Janet and myself went personally to the owner, Mario Soave. He wasn't home, but his wife answered, we talked with her and she explained that they only wanted a married couple. Mario walked in part way through the conversation and repeated the same intentions, and explained that they didn't own the house, but just looked after it, and that their daughter owned it. They sent us away saying to call Nick again. We were sent from Nick to Mario a number of times after that until Nick finally said that they were definitely not renting to us. At this point they had still not even accepted a rental application from us, also I had been in contact with the human rights officer, but had not mentioned that to Nick or Mario. When we had been told a definite 'no', we told Nick about the human rights code about discrimination on the ground of marital status, and he said he didn't care and for us to do whatever we wanted. We also informed Mario of our action and he replied rudely for us to do what we wanted. (Exhibit #4)

Nick Vasija testified that he is a real estate agent with 26 years of experience, who acts as the rental agent for the owner, Soave-Stewart. He also testified that he had no authority to

rent to a prospective tenant without the owner's approval. Ms. Soave- Stewart testified that she made the decision not to rent the house to the Complainants herself, based on what she had been told by Mr. Vasija, and by her parents. She at no time had any personal contact with the Complainants. The Board accepts this testimony.

Mr. Vasija's version of the events is that when he entered the house at 6:30 p.m., he asked the Complainants "who are we?", and that Mr. Brasse answered that they were his girlfriend and a friend. He said that Mr. Brasse indicated that they wanted to rent the house, and that when he said "I can't", Mr. Brasse became pushy, started shoving a cheque at him, and talking about how they were all professionals. Mr. Vasija said he had indicated that he had another showing of the house later that night, and that he did not have the authority to rent the house. He stated that he left the house without taking an application from the Complainants because "I don't take applications like this". He also said that he indicated he would talk to the owner. Mr. Vasija said that Mr. Brasse was rude and aggressive then and later, and that he threatened to sue, and that these were the reasons that he recommended against renting the house to the Complainants.

Both Mr. Brasse and Ms. Wing made it clear that they were not in a girlfriend - boyfriend relationship. The Board prefers their evidence on this point. Mr. Vasija's evidence appears to be an attempt to characterize the relationship in such a way as to eliminate the relevance of marital or family status to the rental decision. In other words, if the Complainants were viewed as "married" or a "family" then, even if the owner had a policy of renting only to couples or families, the Complainants qualified and hence could not have been refused accommodation on this basis.

Both Mr. Brasse and Ms. Wing denied that Mr. Brasse had offered Mr. Vasija a cheque. The Board accepts their evidence on this point. There is no reason for the Complainants to deny this (supposing it to have happened) since this action would not change the consequences of what they testified Mr. Vasija said about the owner's policy of renting only to families or married couples. On the balance of probabilities, the Board prefers the Complainants' version of events.

This leaves the question of why Mr. Vasija left the house without giving the Complainants an opportunity to apply to rent the house. It was either because he knew the owner would not be interested in renting to them because they were three singles and not a couple or a family, or because they were too pushy and he did not like them, or a combination of both reasons. The first and third explanations would constitute violations of the Code. It seems odd that a man with 26 years of business experience would have refused to take an application from such responsible

and financially secure prospective tenants, if only to diffuse their alleged aggression, unless he knew that the owner would not consider them in any event. On the balance of probabilities, the Board finds that the Complainants were not permitted to submit a rental application because of the owner's policy of renting to families or couples. While Mr. Vasijs and Mr. Soave, and through them, Ms. Soave-Stewart, may have developed an intense dislike for the Complainants, the Board finds that the owner's rental policy also played a part in the decision to rent the house to someone else without even considering the Complainants.

Ms. Soave-Stewart testified that she decided not to rent to the Complainants because they were too rude and pushy, and would not make good tenants. She admitted that she never had any personal contact with the Complainants, and that all of her information came through Mr. Vasijs and her parents. From her demeanour on the witness stand, it is clear that she was extremely angry at the Complainants for contacting her parents, and that "when someone says they will get back to you, you should leave it at that". The difficulty which the Board has with this is that no application or any other information was taken by Mr. Vasijs, so how was anyone supposed to "get back" to the Complainants? It seems obvious that from the time Mr. Vasijs left the house, there was no intention on his part, and through him on the owner's part, to get in touch with the Complainants. The fact that the owner's family, the owner, and the owner's agent subsequently found the Complainants to be "too pushy" does not change this, even though it might have lead them to justify the original decision in their own minds.

Ms. Soave-Stewart testified that she chose to not rent to the Complainants because they were not honest about the number of people who would occupy the house. She testified that the Complainants said first there would be three people, then four people, then five people. It is unclear where she got this information. The Complainants testified that they had only stated that there would be three occupants. Their purpose in renting the house was to provide a home for the three of them. Neither of the other Respondents testified on this point. The Board finds no support for this contention by Ms. Soave-Stewart, and finds further that it weakens her credibility as to why she did not consider the Complainants as potential tenants.

Ms. Soave-Stewart also testified that her father did not care for the rental property, other than to collect the rent occasionally. The Board finds this hard to believe, since he lived on the same street as the rental property, and since the tenants at the time in question believed that he was the owner. It is more likely that Mr. Soave was involved enough with the property for the tenants to think that he was the owner.

Ms. Soave-Stewart's credibility was further weakened by her attempt to discredit the evidence of the rental history of the

house. The evidence disclosed that while she was the owner of the house, it had been rented to a couple living common-law, who married while they were living in the house; a couple living common-law who separated during their tenancy; and a man, his sister, her husband and their child. The last mentioned tenants were those who were recommended to Ms. Soave-Stewart by Mr. Vasija at the time when the Complainants were unsuccessful in their attempts to rent the house. All of these tenants were, at the time they became tenants, "married" couples or families. In other words, Ms. Soave-Stewart had not rented the house to singles. This is consistent with the policy alleged to have been stated by Mr. Vasija and the owner's parents. No other explanations were offered for this rental pattern.

Ms. Soave-Stewart tried to argue that she had rented to single people, because when the second couple separated, the woman took in two single roommates with her permission. It is clear however, that the tenant was entitled to do this under the Landlord and Tenant Act and that Ms. Soave-Stewart had no real say in the matter. She also attempted to argue that the second tenants had been just friends, not a "couple". She insisted that a letter written on her behalf by a solicitor, who had been representing her on this matter at the time, was incorrect. That letter, addressed to the Human Rights Commission, read in part:

Between 1988 and 1989 a gentleman named Ron Wilson occupied the home with his girlfriend named Terri, whose last name is not available. (Ex. #7)

After this testimony, counsel for the Commission contacted the woman named "Terri", who indicated that she and Mr. Wilson had lived as husband and wife. Both counsel agreed that these tenants were living as a common-law couple at the time the house was rented to them.

One final piece of evidence remains to be considered, Exhibit #5, a copy of some notes taken by the investigating officer assigned to the case at the time. Unfortunately the officer was unable to testify at the hearing. Her supervisor testified that the note was in the officer's handwriting, and testified as to this officer's note taking habits. I have no reason to suspect that this officer recorded anything but what she believed she heard during her telephone conversation with Ms. Soave-Stewart on October 11, 1989.

Ms. Soave-Stewart denied making the statement recorded in the notes, and accused the officer of being rude to her, and of accusing her of renting only to married couples or families. Part of Ms. Soave-Stewart's frustration with the investigating officer seemed to have been caused because the officer called at an inconvenient time. The notes however were of a telephone call initiated by Ms. Soave-Stewart, and are as follows:

Respondent phoned to declare her innocence. Wanted to know what would happen if she did not reply to the complaint in writing. Says she has always told her father and the agent that she wants only married couples in her home.

There is no evidence before the Board to support Ms. Soave-Stewart's allegations that the investigating officer was impartial in her investigation of this case. Given my findings on the issue of credibility, I do not accept her evidence as to the telephone conversation. However, I do not find it necessary to rely on the notes of the officer with respect to the rental policy of the Respondent.

Mr. Soave testified briefly that he had not told the Complainants that the owner only rented to married couples or families. In light of this Board's findings on credibility, it is likely that this message was communicated to the Complainants, although not necessarily in those exact words. Given the language barriers between the Soave's and the Complainants it is difficult to determine exactly what was said. Nevertheless, the Board prefers the Complainants' evidence on this point.

As a result, this Board finds that Ms. Soave-Stewart had a policy of renting only to couples or families, and that this policy was communicated to the Complainants by both Mr. Vasijsa and by Mr. and Mrs. Soave. The Board further finds that this policy was a proximate cause for the refusal to consider the Complainants as potential tenants for the rental property in question, even if it was not the only cause.

LIABILITY

It is clear from the caselaw that even if marital status was only one factor in the decision to deny the Complainants the opportunity to rent the house in question, the decision constitutes a violation of the Code. (See Ianco v. Simcoe County Board of Education (1983), 4 C.H.R.R. D/1203, and the cases cited therein.)

Section 2(1) of the Code provides that "Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of...marital status, family status...". Section 9 of the Code provides that "No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part".

Ms. Soave-Stewart directly infringed the rights of the Complainants through her discriminatory rental policy, and indirectly through the acts of her agent, Mr. Vasijsa. Mr. Vasijsa directly infringed the rights of the Complainants by acting upon Ms. Soave-Stewart's discriminatory rental policy. Mr. Soave directly infringed the rights of the Complainants through his

acts of communicating the discriminatory rental policy of Ms. Soave-Stewart. As a result, all three Respondents are liable, jointly and severally, for their violations of the Code.

DAMAGES

Special Damages

The Complainants are seeking special damages in the amount of the difference between the rent which each of them would have had to pay had they been successful in renting the house, and the rent which they actually paid, for the 12 month period in which the house would have been available to them to rent. The Board is not convinced that an award of special damages is appropriate in this case.

Mr. Vasija testified that at the time in question there was a relatively high vacancy rate in London. I accept this testimony. Exhibit #3, a copy of the "RENTALS" section of the London Free Press for March 10, 1989, in which the property in question was listed, contains numerous listings for three bedroom homes in the price range desired by the Complaints. (These listings were not necessarily for the same area of London.) Mr. Brasse testified that he continued to look for a week or two for a suitable home for the three of them to rent. Ultimately, he rented a house from his father in the same part of London in which the Soave-Stewart house was located. Ms. Wing remained in her apartment during the relevant time period. The third friend, Gary Chambers, was transferred to another city shortly after this.

Because rental accommodation was plentiful at this time in 1989, because the Complainants did not carry on a very dedicated search to find another house to rent, and because it turned out that the three of them could not live together anyway as a result of Mr. Chamber's transfer, the Board declines to award the Complainants special damages.

General Damages

The Complainants are requesting \$500.00 each for loss of dignity and hurt feelings. Mr. Brasse testified that the experience had made him feel frustrated and angry, with an unnamable emotion that 'comes from knowing that it's just not fair'. He estimated the mix of his emotions as 40-30-30, in the above order. It was clear from his demeanour that he still has a strong experience of these emotions in connection with the denial of this rental accommodation. Although emotions are difficult to quantify, the Board finds an award of \$350.00 to be appropriate in this case.

Ms. Wing testified that the experience had left her very disappointed, and that she was surprised that upon returning to London for the hearing, she again experienced the disappointment of not having had the opportunity to live in the house in question. The Board finds that a nominal award of \$100.00 is appropriate in this case.

Interest

The Complainants are requesting interest on the award at the rate of 11% from December 1, 1989 to the date of this judgment. Counsel for the Respondents agreed to this method of calculating interest. This Board also orders interest on the amounts of \$350.00, \$100.00, and pre-judgment interest; to be calculated in accordance with the Courts of Justice Act, from the date of this judgment to the date of payment.

This Board will remain seized of this matter until the judgment has been paid in full.

Order

This Board orders that the Respondents pay the following amounts:

- a) \$350.00 to Mr. Brasse;
- b) \$100.00 to Ms. Wing;
- c) interest on a) and b) at the rate of 11% from December 1, 1989 to the date of this order;
- d) interest on a), b) c) in accordance with the Courts of Justice Act from the date of this order to the date of payment.

Kathy Tomaszewski

Katherine Tomaszewski
Chair, Board of Inquiry

Dated this 21st day of February 1994.

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26